80-1835

Office-Supreme Court, U.S.
FILED
MAR 24 1981
ALEXANDER L. STEVAS,
CLERK

NO.

in the Supreme Court of the United States

Term, 1981

FRED CROSS AND FAMILY
Petitioners

vs.

DADE COUNTY SCHOOL BOARD,
MIAMI, FLORIDA, et. al.
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Fred Cross, (Pro Se)
2950 Northwest 64 Street
Miami, Florida 33147
(305) 696-1374

QUESTION PRESENTED

Whether the Dade County School Board and its administrative staff have the legal right and authority to *mentally enslave us forever as well as to take taxes from us to help pay our enslavers?*

Whether this school system have the legal right and authority to force an instructor to teach the *common good of White America at the common disadvantage of Black America* in order to keep his job?

Where in America, is the authority that is going to put an end to the suffering and stress of my family as well as my family's family which is the *direct result of the consequences from the above two questions?*

Finally, is my family's rights and authority only written in the constitution without any real deed or action authority?

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WHEREAS, Petitioners are not lawyers, we invoke the Court Judges' knowledge and understanding of the law to be applied to Petitioners' school experiences, facts and knowledge of the law.	

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Fred Cross and Family pray that a Writ of Certiorari issue to review the judgement of the Court of the Fifth Circuit of Appeals, entered in the above-entitled case on January 7, 1981, and that said judgement be reversed.

OPINION BELOW

The certified copy of the opinion of the United States Court of Appeals for the Fifth Circuit is dated incorrectly nevertheless it is included as an appendix to this Petition along with the other orders, etc. . .

JURISDICTION

Petitioners invoke the jurisdiction of this court under 28 U.S.C. statute 1257 (3).

CONSTITUTIONAL PROVISION INVOLVED

The Thirteenth and Fourteenth Amendments of the United States Constitution which provides:

> "Neither slavery nor involuntary servitude except as a punishment for a crime. . . ." ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And so on.

STATEMENT OF THE CASE

The Dade County School Board's action or rubber stamping staff's dismissal of Petitioner without knowing all the facts from both sides, constitutes abuse of power and arbitrary action in violation of the thirteenth and fourteenth amendments. Petitioner brings this action for declaratory and injunctive relief in order that *my family can have the right to liberty and the equal protection of the laws like other ethnic families.* Whereas, laws are a set of rules by which society is governed, custom also does its part. Some laws developed from custom. Petitioner and family reject the custom of institutionalized Black mental slavery and institutionalized White racism of the Dade County School Board to our disadvantage. A brief historical and legal explanation is in order here:

History tells us that slavery has existed in one form or another almost from man's earliest beginnings. Historically, Petitioner understands the why, the how and perhaps the necessity for men, living together in social groups to use one another or even to enslave certain members of the group for the common good or survival of the group. This seems to be the natural order of things with most groups of men living on earth. Despite this fact, it is a monstrous wrong for one group of mankind to enslave another group solely on the basis of *skin color or the other's ethnic features.*

Whereas, long ago American plantation owners made a basic decision. They decided to make African Blacks the cornerstone of their slave institution. The colonial slave masters gave White European workers preferential treatment. White Europeans entered into

written contracts for various reasons to work only for a certain period of time for the slave master; after which they were allowed to use their mental and physical energies as freely as they desired. They were referred to as indentured servants.

On the other hand, the plantation owners deliberately designed a system to dehumanize Blacks by making Blacks their personal property to be bought and sold at *their will.* But here equally as damaging, they designed this system to enslave Blacks forever.

Slavery was practiced in Africa, something which made Blacks susceptible to the colonial slave system. However, the African system was not based on skin color. This colonial slave system has locked millions of unborn Blacks in an incurable system of slave habits.

Therefore, after the first generation and with each new group of slaves, my ancestors had only their American experience to draw from. My ancestor's civilization and cultural traits, which would have made us an *independent* (not depending on the master for our necessities) and cohesive group (racial solidarity) of people today were erased from our ancestors' minds. America's slave institution only allowed my foreparents to retain those cultural traits which would enable them to function as slaves. It took many years of the birth and death of many slaves before White America achieved its goal of developing within Blacks a slave conditioning. Subsequently, it has been basically this body of customs, beliefs, and traditions each generation since have been taught.

Whereas, equally damaging as the above was the masters' brain-washing the slaves into believing that they could not survive unless they submitted to the plantation way of life. This conditioning was accomplished which no one can dispute most Blacks accepted and believed they could not survive without the master. This truly was the tragedy of the situation; they accepted and believed in this form of subjugation, without knowing the full consequence. Therefore, by accepting and believing in this form of control, each new generation suffers from the passing-on of the plantation masters' slave culture.

Now, so much time has passed since The *Emancipation Proclamation* in America, but so little has changed in the psyche of Black Americans. (Observe a Black on a street corner, and it can be seen how little his life experiences differ from that of his forebearers. However much the external environment differs, his inner life is remarkably the same.) The *Emancipation Proclamation merely freed Blacks from a structured physical bondage.* Through this custom this system still holds us in mental, economic and political bondage. This kind of mental servitude of a group of people based on *skin color* is worse than being chained to a plow. Everyone can see a man in chains, but few can see and understand the restraining and the controlling of a man's mind. At best, the *Emancipation Proclamation was the government's way to free Blacks physically and enrich the masters in the process.*

Whereas, no one can deny the overall success of the Masters' slave institution; neither can anyone deny the fact that *government's Emancipation Proclamation damaged Blacks and was the deceptive seed of our*

disadvantagement mentally, economically, socially, educationally, etc.

Then, Petitioner comes to this question: Why government did not put forth a continuing positive effort to change the slaves' mental attitudes, values, and conditioning? Why was there not a continuing effort to deprogram the slaves?

So consequently, we have a slave culture that is locked into a greater free culture, for obvious reasons. Whereas, Petitioner contends that by physically integrating the schools, etc. of the two cultures, does not make them "equal". A slave culture cannot be made "equal" to a free culture through only physical integration, hence, Petitioner and Family are deprived of the equal protection of the laws. The above act merely gives the outward appearance that everyone has an equal chance in life which is misleading. I know the court agrees.

The Warren court's decision in *Brown v. Board of Education of Topeka* is an example of this sort of action. Government has created and financed all sorts of social and political programs and agencies to prop-up this slave culture with the hope of covering it up, etc. Why this continuing deception?

The Dade County School Board, through its agents and servants in their sophisticated covered up way continues to perpetuate the Plantation Masters' intent of mentally enslaving Blacks forever, by reinforcing Blacks' slave culture, instead of changing it. (The extermination of six million Jews was legally covered up.)

At present, damage is being imposed on young impressionable Black children vis-a-vis the school's artificial pretense of meeting these boys and girls mental, social, and psychological needs. The school's Social Studies, English Literature and to a lesser degree some of the other curriculum offerings to a great extent help reinforce and amplify Black children's present social, mental and psychological dilemma. This curricula do not provide for any real substaining ego support nor true self-pride for Blacks as it does for White children. They consciously and unconsciously, provide many Black children with a motive *not* to learn or *not* to have a zealous interest in learning. Further, the curricula prevent Black children from becoming self-reliant or self-sufficient which leads to a dependence on the system for all kinds of subsidies. The plantation masters gave birth to the state of dependency and Dade County educational system perpetuate it. The curricula that are predominately written by Whites and managed by Whites create within many Black children a desire to be White. Whereas, White racism promotes and accepts Blacks acting White, but rejects the full acceptance of Blacks. By acquiring Western White culture does not make Blacks White. At best, it leads some Blacks to sound reasoning. At worst many Black children express self-hate and a firm belief in Whites instead of themselves. From time to time, White curricula stir up anxiety, hostility and confusion within Black children and at the same time blocks the legitimate release of the anxiety, hostility and confusion. *This leads to frustration and worthlessness within many Black children and these mental and psychological problems continue in a vicious cycle.* All which is the direct result of the system maintaining and locking our slave culture within it, and attempting

to deceive everyone that they are providing equal educational opportunities for all. *Whites would not accept this kind of education for their children let alone pay for it. Why should my family?*

Black boys and girls need a curricula whereby they will know and understand the full economical and social dynamics of their slave culture. Whereby, the capable boys and girls will have the knowledge and understanding to accept the challenge to free their culture of *this vicious worthless slave mentality.* To know and to understand fully, how it was a tragic mistake for their ancestors to accept and to believe in and depend on the Plantation masters for their livelihood. Whereby these boys and girls will begin *to think, believe and depend on themselves for their livelihood, instead of their inherited way.*

Now, the record will reveal that on July 13, 1977, Mr. Michael R. N. McDonnell, had his hearing to determine whether Petitioner should be suspended or dismissed from employment with the Dade County School Board.

On the 24th day of August 1979, Petitioner was dismissed from his position in Dade County school system for allegedly being absent from his duties without authority. Thus on the 15th day of September 1977, Petitioner filed a Notice of Appeal to the Department of Education. Mr. Turlington appointed Mr. Vossler to act as State Board Hearing Officer. He recused himself, etc. Then, Mr. Turlington appointed Mr. Woods as Hearing Officer for the State.

On November 3, 1978, Petitioner's dismissal was brought before the State Board of Education. They

accepted and adopted Mr. Woods' recommendation to uphold my dismissal, which was executed and rendered on the 8th day of February 1979.

Trying to appeal my case in the right appellate court from the above level was misleading and confusing. It appeared to be a deep dark secret; Petitioner could not get the right information as to where to file a Notice of Appeal from the State Board of Education. In the meantime, on December 28, 1978, Petitioner filed a complaint with the EEOC, and a week later I filed a Notice of Appeal in the Circuit Court of the Eleventh Judicial Circuit in Dade County, both to no avail.

On January 2, 1979, Mr. Theodore A. Bukowski, District Director for EEOC dismissed the charge because it was untimely filed. Notwithstanding no sooner that Judge Herbert Stettin found out what Petitioner was complaining about and he too found a reason to dismiss my case, without a hearing or trial on June 13, 1979.

After several calls to the United States Department of Justice in Washington, D.C., and a six months wait, finally Mr. Herbert A. Goldsmith Jr., an attorney for Justice Department by way of a certified letter gave Petitioner a *Notice of Right to Sue Within 90 Days*, which I did in United States District Court of Florida.

Further, for the past three years, Petitioner has pleaded and appealed his case to the Dade County School Board, the State of Florida Department of Education, the Dade County Commissioners, a Circuit Judge, and to surrogates of them all. On September 17, 1978, I wrote a letter to the former Governor Reuben

Askew expressing the fact that the only way I could get a fair and impartial hearing would be by way of a jury of citizens who do not depend on tax dollars for their livelihood, nor have any desire to. He had within his powers the authority to empanel such a jury, but he did not so act. This was also the rationale for requesting a jury trial from the United States District Judge Sidney M. Aronovitz. All the above decision-making officials, at best, give only lip service in denying their practicing institutionalized White racism and mental slavery over Blacks, without any serious effort toward carrying their words into deeds. Their serious efforts toward creating the appearance of not practicing or supporting the above. I have accumulated a pile of documents to this effect.

HOW A FEDERAL QUESTION IS PRESENTED

Petitioner appeal from the denial of a hearing to which this court has held us entitled under the Thirteenth and Fourteenth Amendment to the Federal Constitution.

REASON FOR GRANTING THE WRIT

There is an urgent, ongoing need for constitutionally mandating in the State of Florida, and especially so in Dade County Florida. By pursuing justice in y'all legal maze, it took me three and half years from the date of my dismissal by the Dade County School Board to appeal my case before the United States Court of Appeals for the Fifth Circuit. Only to have them refuse to review a decision reached by two suppressive racist administrators, a cloak and dagger state prosecuting hearing officer, the late legal crooked School Board

Chairman and his rubber stamping School Board members. After which I also plead my case to a long list of the system's protectiveless local and federal judges and bureaucrats, as well as certain selfserving local and state politicians. All of course to no avail. In the meantime my family and I are still under the stress and strain of the Dade County School Board's decision of taking away my job and career as an instructor because I would not allow them to enslave my mind.

The record, the documented evidence (See Exhibit A & B) time and the events that followed definitely made it perfectly clear that on September 27, 1967, the demotion and transfer of Petitioner from a counselor at Miami Jackson High School to a six grade teacher at Allapattah Junior High was done simply because Petitioner did not agree with the all White administration's reduced curriculum standards and low academic achievement expectations which they instituted at this all Black high school.

The records will reveal that the Petitioner supported White principals in predominately Black schools who exemplified a genuine concern and interest in trying to meet the needs of Black students. Whereas, those White principals in predominately Black schools who were not interested nor concerned about meeting the needs of Black students invariably used their power connections to have Petitioner demoted and reassigned.

From January 30, 1970, to October 15, 1975, Petitioner taught and interpreted the school's curriculum to 5th and 6th grade classes in a predominately middle and upper middle class White neighborhood at Fairchild

Elementary School. The greatest challenge in teaching is trying to meet *the mental and psychological needs of the poor and Black boys and girls.* Consequently, Petitioner requested reassignment to the nearly all Black Edison Park Elementary School. Petitioner only desire was to do the greatest good for the greatest number of these boys and girls. Whereas, Petitioner could still be teaching and interpreting the school's curriculum at Fairchild, however, Dr. Jeff West, North Cental Area Superintendent and Mr. Steve Moore, Assistant Superintendent for Personnel saw to it that Petitioner would not be allowed to meet the needs of predominately 5th and 6th grades Black boys and girls at Edison Park Elementary.

Whereas, documented evidence will show that on January 9, 1976, Petitioner was unjustly involuntarily assigned from a sixth grade teaching assignment at Edison Park Elementary School to a first grade teaching assignment in an open classroom setting at Primary "C" School for no apparent reason, other than to insult, abuse, oppress and eliminate Petitioner mentally. (See documented package, Exhibit C). Here again, a White principal in a predominately Black school used her power structure connections to have Petitioner demoted and unjustly involuntarily reassigned. Simply because Petitioner protested and spoke out against the principal and her clannish group of White teachers who were willfully white-washing innocent Black boys and girls to their tradition, rather than challenging them or trying to meet their real mental and psychological needs. Documented evidence will substantiate the above.

Whereas, on August 26, 1976, Petitioner notified Dr. Charlie Williams, Principal of Primary "C" School

that he was not physical nor mentally prepared to teach and interpret the curriculum to first graders. Whereas, Petitioner requested Dr. Williams to write him a letter of recommendation and allow Petitioner to call Mr. Steve Moore at Personnel which he did. Dr. Williams got Mr. Moore on the telephone and Petitioner notified Mr. Moore of the impossibilities of the first grade assignment and requested an appropriate assignment. Then, Mr. Moore requested to speak with Dr. Williams. Petitioner has documented evidence to support the above facts. (See Exhibit D)

From August 26 to October 8, 1976, my daughter and Petitioner had an acute case of bronchitis, and in addition, Petitioner had a persistent pain in his right leg. The longer Petitioner stood on leg, the greater the pain. Doctor gave the Petitioner a prescription and advised him to stay off his right leg as much as possible, and so on.

On October 8, 1976, Petitioner called Dr. Jeff West, North Central Area Superintendent, and informed him that due to the physical history of his right leg and his educational background plus experience, that it was impossible for him to accept the forced assignment at Primary "C" School.

Further, Petitioner stated he would wait and would be available to start work whenever an appropriate teaching assignment was made. To expedite the above thoughts, Dr. West said he would write a memo to Mr. Moore.

Whereas, on April 22, 1976, Petitioner went to the North Central Area Office to get a copy of the memo

Dr. West said he would write to Mr. Moore concerning the telephone conversation we had, only to discover that Dr. West had not written a memo nor called Mr. Moore concerning my intentions. Thereafter, each time the Petitioner tried to contact Dr. West, his secretary would have a way of making him unavailable and pretended she knew nothing.

There is an old saying that justice delayed is justice denied. Thus, with this thought in mind, Petitioner called and set up a meeting with Dr. Ben Sheppard, Chairman of the School Board, on Monday, January 31, 1977 at 3:45 p.m. Petitioner notified Dr. Sheppard of the fact that he had been unjustly involuntarily assigned to teach a first grade class which he had no skills to do or was not capable of physically. Petitioner also informed him of the fact that he had been waiting for an appropriate assignment since the beginning of the school year.

Dr. Sheppard stated, "I will see what I can do, call me Friday of this week if you have not gotten any action." Like clockwork before the week was over Mr. Moore called and verified the fact that Petitioner was unable to accept the unjust involuntary first grade assignment and that Petitioner was waiting for an appropriate assignment. During the conversation, Mr. Moore said he had not seen a memo from Dr. West's office and before ending he said that Petitioner would hear from them.

Petitioner could not reach Dr. Sheppard on Friday, February 5, 1977, however, on Friday, February 12, 1977, Petitioner called Dr. Sheppard's secretary and she informed him that Dr. Sheppard said he could not do anything.

Whereas, the records will show that on July 11, 1977, during the hearing that was held by Mr. Michael R.N. McDonnell, no provision was made by the agency, (Mr. Steve Moore and Mrs. Phyllis Douglas, Board's attorney) for the preservation of testimony of the proceeding. Petitioner did not agree with this. One third of the hearing was over when Mr. McDonnel said that maybe they needed a court recorder at which time he turned to Mr. Moore and stated, "It is the responsibility of the school system to have a court recorder present." There was a brief pause. Whereas, he looked toward me and inquired "Would you waive the requirement of recording the proceedings?" I plainly replied that "This is your show, not mine." Then they proceeded on with the hearing.

During the hearing Petitioner was not given a reasonable opportunity to defend himself fully. Mr. McDonnell would not answer Petitioner's pre-hearing question. He refused to accept Petitioner's documented evidence of charges made by the White principal of Edison Park Elementary School and answered by Petitioner. He did not conduct a full, fair, nor impartial hearing.

He stopped Petitioner from questioning Mr. Moore, etc. It was a futile attempt on Petitioner's part to appeal to institutionalize White racism about White institutionalize racism.

Further, on July 11, 1977, Dr. Charlie Williams, Principal of Primary "C" School was summoned to meet with one Jesse McCrary, assistant school board attorney, and Steve Moore, assistant superintendent

for personnel for the purpose of agreeing with notice of charges against Petitioner. (See Exhibit E) Dr. Williams refused to comply because the charges were not accurate or complete. After attorney McCrary realized what was happening, he too withdrew from the case on the very day Petitioner's case was to be heard by Mr. Michael R.N. McDonnell. Attorney McCrary was not called to testify by the substitute attorney, Mrs. Phyllis Douglas. Why?

On January 11, 1979, Dr. Williams was suspended and subsequently dismissed from the Dade County School System, and one of the charges leveled against him by Mr. Moore was that he refused to testify for the School System against the Petitioner. The hearing officer in Dr. Williams case was the same officer who presided over Petitioner's case. When Mr. McDonnell came to this charge, he recalled the case and suggested that he recuse himself. However, he continued with the hearing and later acquitted Dr. Williams.

Although, Mr. Moore had the authority under chapter 120 F.S. and 230 F.S. to subpoena Dr. Williams to testify at Petitioner's hearing he chose not to, subsequently, however in the proceeding against Dr. Williams, Mr. Moore testified of Dr. Williams refusal to testify against the Petitioner as a ground for seeking the dismissal of Dr. Williams.

Given these facts, it follows that Mr. Moore willfully omitted Dr. Williams' testimony in the Petitioner's hearing which would have been critical of his charges yet supportive of the Petitioner. This Court understands the threat to Blacks who go against the absolute White

authority when this authority is *wrong.* Petitioner is a victim of this sort of action. (See Transcript excerpts)

Further, neither Mrs. Douglas nor Mr. Moore informed Petitioner of his right to be heard by the School Board when they and the hearing officer had ruled against him. However, on the evening of August 22, 1977, Petitioner called Mr. Holmes Braddock, former chairman of the School Board and he told Petitioner that he had a right to be heard by the Board when the two agencies of management had ruled against him. Even though Petitioner got his bit of information too late on August 23, 1977, Petitioner called the School Board's clerk and inquired about being heard on my dismissal agenda item 3:105.

Whereby, she informed Petitioner that he was late, but to write a formal request to be heard and come to the School Board meeting on August 24, 1977, which Petitioner did. Before the Board took a recess, Dr. Ben Sheppard, Chairman of the School Board, told Petitioner, he believed the Board would want to hear him. It goes without saying that after they returned to continue their meeting, Dr. Sheppard influenced all but Mr. Braddock and Mr. Turner to rubber stamp Petitioner dismissal without hearing his side of the case.

The records and evidence made it clear that Dr. Jeff West, North Central Area Superintendent and Mr. Steve Moore, Assistant Superintendent for Personnel *maliciously assigned Petitioner from a six grade class to a first grade class against his will in order to eliminate him intellectually, as well as his seventeen and a half years of experience as an upper level teacher. In addition, Mr. Moore and Dr. West deliberately abandoned Petitioner*

and his family and subsequently had the School Board to dismiss Petitioner for being absent without their authority. This is their sophisticated authoritative way of implementing institutionalized mental slavery over Petitioner. Nowhere in the annals of these two men's authority will you find a White teacher being treated in the same manner as Petitioner, under a similar set of circumstances.

On January 5, 1978, Mr. Ralph D. Turlinton, Commissioner of Education appointed Mr. Thomas F. Woods as State Board of Education Hearing Officer. On or about February 28, 1978, Mr. Woods refused to answer Petitioner's pre-questionnaire, which was designed to determine if Petitioner could get a fair and impartial hearing. Mr. Woods refused to recuse himself, and like Mr. McDonnel he refused to accept Petitioner's documented evidence etc. Petitioner did not receive a fair, full nor impartial hearing from Mr. Woods.

Judge Sidney M. Aronovitz of the United States District Court of Florida basis for dismissal is in direct conflict with the statements of Mr. Theodore A. Bukowski, District Director of Equal Employment Opportunity Commission, and Mr. Herbert A. Goldsmith Jr., an attorney for the Federal Enforcement Section for the United States Department of Justice. Mr. Bukowski clearly stated, ". . . I dismiss the charge because it was untimely filed . . ." (This is the same 180 days the Judge cited in his order of dismissal). Then, further in the letter, Mr. Bukowski said the next step was to "File a private action in Federal District Court against the respondent . . . within 90 days of receipt of Notice of Right to Sue which will be issued by the Department of Justice . . ."

Now, on September 21, 1979, by way of a certified letter Mr. Goldsmith of the U.S. Department of Justice gave Petitioner a Notice of Right to Sue within 90 days which I did in Judge Aronovitz's court. (See Exhibit F) which makes Petitioner's untimely filing sufficient under *Chappell.* Untimely filing may be excused if the EEOC misleads Petitioner about his rights under Title VII. See *Page v. U.S. Industries Inc.*, 556 F.2d 346 (5th Cir. 1977), denied 434 U.S. 1045 (1978); *White v. Dallas Independent School District*, 581 F.2d 556 (5th Cir. 1978) (See Exhibit G).

In addition, Petitioner was unaware of the underlying facts giving rise to the Title VII action before he was informed by way of Mr. Bukowski's letter. See *Bickham v. Miller*, 584 F.2d 736 (5th Cir. 1978); *Reeb v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924 (5th Cir. 1975). Accordingly, the Judge is in error.

Whereas, the summary opinion of the Fifth Circuit in its illogical way merely prosecuted petitioners by using *Judge Aronovitz's reason to do nothing other than to up-hold the system rather than to do justice to the oppressed petitioners.*

CONCLUSION

WHEREFORE, for the foregoing reasons and there is no plain, adequate, or complete remedy to redress the wrongs and unlawful acts herein complained of other than this action for declaratory relief, injuctive relief and damages. That as a result of the conduct of defendants herein, in addition to deprivation of constitutional rights, Petitioners have suffered incalculable emotional distress and humiliation as well as loss of Petitioner's income for the last four school years. No White American ethnic family has to undergo the damages that Petitioner and his family have suffered by Defendants as herein set forth.

Petitioners respectfully pray that this Court assumes authority of the parties and the complete subject matter hereto.

Respectfully submitted,

FRED CROSS
2950 Northwest 64th Street
Miami, Florida 33147
Phone: 696-1374

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of the foregoing petition on the Dade County School Board's attorneys, and it was mailed postage pre-paid to C. L. Pickle, attorney for the defendants, at 628 Ingraham Building, 25 Southeast Second Avenue, Miami, Florida 33131, on this _____ day of _____, 1981.

BY: _____
FRED CROSS

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SCHOOL BOARD OF DADE COUNTY

CASE NO. 77-827

SCHOOL BOARD OF DADE COUNTY,
Petitioner,

v.

FRED L. CROSS,
Respondent.

ORDER OF THE SCHOOL BOARD OF DADE COUNTY, FLORIDA

THIS CAUSE came on for hearing before The School Board of Dade County, Florida, at its regular meeting on August 24, 1977, upon the Hearing Officer's Recommended Order with Findings of Fact and Conclusions of Law, finding that Fred L. Cross has been absent from his duties without authority and recommending that Fred L. Cross be dismissed from his position in the Dade County school system and forfeit compensation for the period of his absence.

IT IS THEREUPON ORDERED by The School Board of Dade County, Florida that:

1. The Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, attached hereto, be and the same is hereby adopted as the final order of the School Board; and

2. Fred L. Cross be and is hereby dismissed from his employment with The School Board of Dade County, Florida, and shall forfeit all compensation from October 8, 1976.

DONE AND ORDERED this 24th day of August, 1977.

THE SCHOOL BOARD OF
DADE COUNTY, FLORIDA

By /s/ BEN J. SHEPPARD
Ben J. Sheppard, Chairman

STATE BOARD OF EDUCATION

FRED L. CROSS,

Appellant,

vs.

DADE COUNTY SCHOOL BOARD,

Appellee.

ORDER

Having considered the Appellant's motion for me to recuse myself as the hearing officer in this case and after having examined the evidence, I find no sound reason for granting such request, it is therefore

ORDERED that Appellant's request is denied and Appellant is directed to file his brief and the appropriate portions of the stipulated records within twenty (20) days from the date of this Order.

DONE AND ORDERED this 4th day of April, 1978.

/s/ THOMAS F. WOODS
THOMAS F. WOODS,
Hearing Officer

Copies furnished to:

Fred L. Cross
Phyllis O. Douglas

BEFORE THE STATE BOARD OF EDUCATION
OF FLORIDA

CASE NO. 77179-I

Fred L. Cross,

Appellant,

vs.

THE SCHOOL BOARD OF DADE COUNTY,

Appellee.

ORDER

The Order of the School Board of Dade County dismissing Fred L. Cross and cancelling his continuing contract is hereby affirmed pursuant to Section 231.36, Florida Statutes. The report and recommendation of the Hearing Officer for the State Board of Education is hereby accepted and adopted by the State Board of Education as its own.

DONE AND ORDERED at the regularly scheduled State Board of Education meeting in open session at Tallahassee, Florida, as of the 21st day of November, 1978.

EXECUTED AND RENDERED on this 8th day of February, 1979.

/s/ REUBIN O'D. ASKEW
Reubin O'D. Askew,
Governor; Chairman

Jesse J. McCrary, Jr.,
Secretary of State

/s/ ROBERT L. SHEVIN
Robert L. Shevin,
Attorney General

/s/ GERALD A. LEWIS
Gerald A. Lewis,
Comptroller

/s/ BILL GUNTER
Bill Gunter,
Treasurer

/s/ RALPH D. TURLINGTON
Ralph D. Turlington,
Commissioner of Education;
Secretary-Executive Officer

/s/ DOYLE CONNER
Doyle Conner,
Commissioner of Agriculture

As and constituting the State Board of Education of Florida as assembled for the purposes herein.

Duly recorded in the official records of the State Board of Education of Florida.

I HEREBY CERTIFY that copies of the foregoing Order in the matter of Fred L. Cross vs The School Board of Dade County were mailed to Phyllis O. Douglas and Fred L. Cross this 8th day of February, 1979, by U.S. Mail

/s/ HUGH INGRAM

Hugh Ingram,
Administrator
Professional Practices Council

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 79-001-AP

FRED L. CROSS,

Appellant,

v.

THE SCHOOL BOARD OF DADE COUNTY,

Appellee.

ORDER

It appearing to the Court, *sua sponte* that the Appellant has failed to comply with Florida Rules of Appellate Procedure, and the Court being fully advised in the premises, the appeal is dismissed.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 13th day of June, 1979.

/s/ _____

HERBERT STETTIN, Judge

cc: Fred L. Cross, Appellant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 79-5097-Civ-SMA

FRED CROSS, etc., et al.,

Plaintiffs,

vs.

DADE COUNTY SCHOOL BOARD, et al.,

Defendants.

THIS CAUSE came before the Court upon the Defendants' Motion to Dismiss. The Court, having considered said Motion and its supporting memorandum, and having reviewed the record and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the motion is GRANTED, and the Amended Complaint is DISMISSED for the reasons set forth below.

By its Order of March 20, 1980, the Court dismissed Plaintiff's Complaint with leave to amend for his failure to comply with the jurisdictional prerequisites of Title VII. The Court based the dismissal on the fact that, while Plaintiff had filed a charge of discrimination with the EEOC, that charge had not been filed within the 180 day time period required by the statute. Recognizing that the time period for filing a charge may be tolled in exceptional circumstances, *Chappell v. Emco Machine Works Co.*, 601 F.2d 1295 (5th Cir. 1979), the Court allowed Plaintiff twenty (20) days to file an amended complaint and stated:

"Such Amended Complaint shall set forth in detail the reasons for Plaintiff's failure to timely file with the appropriate agencies."

Thereupon, Plaintiff, on April 3, 1980, filed a document captioned "An Amended Complaint." In this document, Plaintiff attempted to explain the basis for his untimely filing with the EEOC. The gist of his explanation is that he deems the procedures that he followed in complaining to various agencies of the State of Florida as satisfying the preconditions to a Title VII action.

As noted in its prior Order, the Court recognizes that complaints under Title VII should be liberally construed, *Love v. Pullman*, 404 U.S. 522 (1972), and that this is particularly true where the plaintiff is proceeding *pro se*, *Haines v. Kerner*, 404 U.S. 519 (1972). However, the reasons offered by the Plaintiff for his untimely filing are insufficient under *Chappell*. In that case, the Fifth Circuit recognized only three situations that would excuse untimely filing.

The first such situation is where a plaintiff has filed a lawsuit on the Title VII action in any court during the 180 day period. *See International Union of Electrical v. Robbins & Myers*, 429 U.S. 229 (1976). The second situation is where the plaintiff is reasonably unaware of the underlying facts giving rise to the Title VII action. *See Bickham v. Miller*, 584 F.2d 736 (5th Cir. 1978); *Reeb v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924 (5th Cir. 1975). Finally, timely filing may be excused if the EEOC misleads the plaintiff about his rights under Title VII. See *Page v. U.S. Industries, Inc.*, 556 F.2d 346 (5th Cir. 1977), *cert. denied* 434 U.S. 1045

(1978); *White v. Dallas Independent School District*, 581 F.2d 556 (5th Cir. 1978).

Plaintiff has failed to bring himself within any of these established exceptions, and the Court finds that any equitable considerations in this case are insufficient to create a new exception. Accordingly, the Amended Complaint must be DISMISSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 28 day of April, 1980.

/s/ Sidney Aronovitz
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Fred Cross
C.L. Pickle, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-5406

FRED CROSS, and on behalf of all
others similarly situated,
Plaintiff-Appellant,

v.

DADE COUNTY SCHOOL BOARD, Miami,
Florida, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(January 7, 1980)

Before HILL, FAY and ANDERSON, Circuit Judges.

PER CURIAM:

Appellant, Fred Cross, filed suit in United States District Court against the Dade County School Board and several employees thereof (herein called defendants) complaining that defendants discharged appellant from his teaching position in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(e), et seq. Appellant was discharged on August 24, 1977. He filed his charge, complaining of his employer's action, with the Equal Employment Opportunity Commission (EEOC) on December 28, 1978, more than 16 months

after his discharge. Section 2000e-5(e) provides, as a condition precedent to filing suit in district court, that a charge must be filed with the EEOC "within 180 days after the alleged unlawful employment practice occurred." The district court entered an order on March 21, 1980, dismissing appellant's complaint, *inter alia*, for failure to file a timely charge with the EEOC, but granted appellant leave to amend his complaint to set forth reasons for his failure to file within the prescribed time. Appellant did file an amended complaint on April 3, 1980. On April 28, 1980, the district court dismissed the amended complaint, holding that appellant had failed to allege legally sufficient reasons for his failure to file his charge with the EEOC within the required time. From this order appellant appeals.

The only issue on appeal is whether appellant's amended complaint alleged legally sufficient reasons to excuse his failure to file with the EEOC "within 180 days after the alleged unlawful employment practice."

Construing the amended complaint liberally, it sets forth two alleged excuses. First, it alleges that apellant pursued his administrative appeals to the Department of Education, with the implicit suggestion that such appeals should toll the 180-day filing period. However, the Supreme Court in *Electrical Workers v. Robinson-Myers, Inc.*, 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976), held that pursuit of such remedies does not toll the time for filing charges with the EEOC. Second, appellant's amended complaint suggests that he pursued state court remedies, with the implicit suggestion that this should toll the time for filing with the EEOC. However, apellant did not file in state court until after the time for filing with the EEOC had expired — in

fac appellant did not appeal to the state courts until after he had filed with the EEOC — and accordingly the pursuit of state court remedies obviously could not toll the time for filing with the EEOC. Accordingly, we find that the reasons asserted in appellant's amended complaint are legally insufficient.

In his brief on appeal, appellant makes two additional arguments. First, he argues that his untimely filing should be excused because he was misled by the letter he received from the EEOC and the letter he received from the Justice Department. On January 2, 1979, the EEOC wrote appellant dismissing appellant's charge of discrimination because it had not been filed within the 180-day period. Because the letter mentioned appellant's right to sue within 90 days, appellant argues that he was misled, and that this should excuse his failure to file within the 180-day period. However, the EEOC letter was written and received after the expiration of the 180-day period, and obviously could not have had any effect at all on whether appellant did file or should have filed within the 180-day period. Similarly, appellant's "right-to-sue" letter from the Justice Department was dated September 21, 1979, and therefore was written and received after the expiration of the 180-day period. We conclude that neither letter could have misled appellant nor could have contributed in any way to his failure to file within the 180-day period. Second, appellant argues, in conclusory language, that he was unaware of the underlying facts giving rise to his Title VII action before he was informed by the EEOC letter. Not only was this argument not raised in the court below, but it is clearly without merit. The record demonstrates that appellant was aware from the beginning of the facts

underlying his allegation of discrimination, and that he asserted his discrimination charges from the beginning and throughout his pursuit of administrative remedies. He now argues in brief that he was unaware of the 180-day filing requirement, but ignorance of legal requirements has never been held to be a legally sufficient excuse. See *Chappell v. Emco Machine Works Co.*, 601 F.2d 1295 (5th Cir. 1979). Accordingly, we also find appellant's arguments on appeal to be without merit.

The judgment of the district court is accordingly AFFIRMED.

Office-Supreme Court, U.S.
FILED
JUN 25 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1835

In the Supreme Court of the United States

October Term, 1980

FRED CROSS AND FAMILY,
Petitioners,

vs.

DADE COUNTY SCHOOL BOARD,
MIAMI, FLORIDA, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF

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QUESTION PRESENTED

Whether Petitioner has been denied his constitutional rights under the Thirteenth and Fourteenth Amendments of the United States Constitution.

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PETITION FOR WRIT OF CERTIORARI
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RESPONDENTS' BRIEF

STATEMENT OF THE CASE

The record before the United States Court of Appeals for the Fifth Circuit establishes the following:

On September 27, 1967, Petitioner, FRED CROSS, a counselor at Miami Jackson High School, was transferred to a sixth grade teacher at Allapattah Junior High.

From 1970 to 1975, Cross taught the fifth and sixth grade classes at Fairchild Elementary School.

On January 6, 1976, Cross was asigned to the first grade teaching assignment at Primary "C" School.

On August 26, 1976, Cross advised Dr. Charles Williams, Principal of Primary "C" School that he was neither physically nor mentally prepared to teach first graders. He worked that day (August 26, 1976) and then left and called in sick for the work days up to and including October 8, 1976. This period of time constituted authorized sick leave.

On October 8, 1976, Cross advised Dr. West, North Central Area Superintendent, that he would not report to work at Primary "C", but was available to assignment at another school. Stated otherwise, he refused to report for duty at his assigned work location and the School Board never authorized his absence from duty after October 8, 1976.

On July 11, 1977, pursuant to notice, a hearing was held before the Division of Administrative Hearings on charges filed by the Dade County School Board against Petitioner of being absent without leave from October 8, 1976 to July 11, 1977.

On August 5, 1977, Findings of Fact and Conclusions of Law were entered which held that Cross violated §231.44, Fla.Stat. by being willfully absent from his duty without leave from October 8, 1976 to the date of the hearing (July 11, 1977) and he was dismissed from his employment with the Dade County School System.

On August 24, 1977, the School Board adopted the Findings of Fact and Conclusions of Law and Recommended Order and dismissed Cross.

On December 28, 1978, more than 16 months after his discharge from employment with the School Board of Dade County, Florida, Petitioner filed a charge complaining of the School Board's action with the Equal Employment Opportunity Commission (EEOC). The EEOC notified him it dismissed his charge of discrimination because it was untimely filed. The letter stated that a charge must be filed within 180 days after the alleged violation.

On February 8, 1979, the State Board of Education of Florida affirmed the Order of Dismissal.

Petitioner's appeal to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida was dismissed on June 13, 1979 based upon his failure to comply with the Florida Rules of Appellate Procedure.

On October 31, 1979, Petitioner filed suit against the Dade County School Board, Miami, Florida, Jeff West, Superintendent of the North Central Area office in Dade County, Florida, and Steve Moore, Assistant Superintendent for Personnel, Miami, Florida, under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(e) et seq. alleging discrimination in employment based on color.

On March 20, 1980, the trial court entered an Order Dismissing Complaint With Leave to Amend which dismissed the Complaint against Steve Moore inasmuch as his name did not appear in the charge of discrimination Petitioner had filed with the EEOC; recited the fact that Petitioner's charge of discrimination filed with the EEOC and a similar charge filed with the State of Florida Department of Community Affairs were both denied because they were untimely; held that the timely filing of a complaint with the EEOC is a jurisdictional prerequisite for bringing a Title VII action in federal court and held that based upon *Chap-*

pell v. Emco Mach. Works Co., 601 F.2d 1295 (5 Cir. 1979) untimeliness may be excused and, therefore, allowed Cross to file an Amended Complaint setting forth in detail the reasons for his failure to timely file with the appropriate agency.

Cross filed an Amended Complaint which alleged:

1- He followed Florida School Laws 1977 Edition, Chapter 228-246, Florida Statutes.

2- On August 24, 1977, he was dismissed from the Dade County School Board System for abandoning his teaching position.

3- On September 15, 1977, he filed a Notice of Appeal with the Department of Education.

4- He thought it was more fair and just to seek justice from the Courts of the State of Florida before going into the federal court.

The Dade County School Board, Jeff West, and Steve Moore, filed a Motion to Dismiss the Amended Complaint on the grounds that: (1) the Complaint alleged jurisdiction under 42 U.S.C. §2000(e) (Title VII) and failed to allege the performance of various conditions precedent to the filing of a Title VII lawsuit; (2) the Amended Complaint failed to allege adequate facts showing equitable delay or interruption sufficient to excuse his untimeliness in filing with the EEOC and, therefore, the Court lacks jurisdiction; (3) the Complaint against Steve Moore was dismissed with prejudice and, therefore, he cannot be brought back into the action by Plaintiff's Amended Complaint; and (4) Plaintiff failed to exhaust his administrative remedies.

On April 28, 1980, the trial court entered an Order of Dismissal which held that Plaintiff's Amended Complaint failed to bring himself within any of the established exceptions which excuse an untimely filing with the EEOC.

An appeal to the United States Court of Appeals for the Fifth Circuit resulted in an affirmance. The unpublished opinion, which is cited at 636 F.2d 312 (5 Cir. 1981), held that Cross' Amended Complaint did not allege legally sufficient reasons to excuse his failure to file with the EEOC within 180 days after the alleged unlawful employment practice. The Court held that Cross' pursuit of administrative appeals to the Department of Education with the implicit suggestion that such appeals would toll the 180-day filing period was invalid in accordance with *Electrical Workers v. Robinson-Myers, Inc.*, 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976).

The Court rejected Cross' excuse that he pursued a state court remedy with the implicit suggestion that this would toll the time for filing with the EEOC because he did not file in the state court until after the time of filing with the EEOC had expired—in fact, Cross did not appeal to the state court until after he had filed with the EEOC and, therefore, the pursuit of the state court remedies obviously could not toll the time for filing with the EEOC.

The Court rejected Cross' additional arguments that his untimely filing should be excused because he was misled by a letter he received from the EEOC dated January 2, 1979. On that date, the EEOC wrote Cross dismissing his charges because it had not been filed within the 180-day period. The EEOC's letter which mentioned his right to sue within 90 days could not have misled Cross because he received the letter after the expiration of the 180-day period and the Court said "obviously could not have had any effect at all on whether appellant did file or should have filed within the 180-day period."

The Court also rejected Cross' argument based on the "right-to-sue" letter from the Justice Department dated September 21, 1979 which was written after the expiration

of the 180-day period. The Court said that "neither letter could have misled appellant nor could have contributed in any way to his failure to file within the 180-day period."

Cross' argument that he was unaware of the underlying facts giving rise to his Title VII action before he was informed by the EEOC was rejected because it was not raised in the trial court and is clearly without merit. The Court held that the record demonstrated that Cross was aware from the beginning of the facts underlying his allegation of discrimination and that he asserted his discrimination charges from the beginning and throughout his pursuit of administrative remedies.

Cross' argument that he was unaware of the 180-day filing requirement was also rejected because ignorance of legal requirements have never been held to be a legally sufficient excuse.

ARGUMENT

Respondents submit that the Petition for Writ of Certiorari should be denied because the decision does not conflict with the decision of another federal court of appeals. *Pure Oil Co. v. Suarez,* 384 U.S. 202, 86 S.Ct. 1394, 16 L.Ed. 2d 474; *Massey Motors v. United States,* 364 U.S. 92, 80 S.Ct. 1411, 4 L.Ed.2d 1592.

The facts do not show that Petitioner has been denied a hearing, and, therefore, his constitutional argument which was never presented to the trial court or the Court of Appeals must also be rejected. *Saxbe v. Bustos,* 419 U.S. 65, 95 S.Ct. 272, 42 L.Ed.2d 231. Nonetheless, the record reflects that Cross was afforded the opportunity of a full hearing pursuant to notice by the Division of Administrative Hearings of the Dade County School Board. Merely

because the hearing was not reported does not refute this fact.

The record also reflects that Cross failed in his burden of demonstrating a valid excuse for his failure to timely file a complaint with the EEOC. The facts demonstrate that Cross was not and could not have been misled because, as stated in the decision, the EEOC letter was written and received after the expiration of the 180-day period and the Justice Department "right to sue" letter was also received after the expiration of the 180-day period.

The decision follows *Chappell v. Emco Mach. Works Co.*, supra; *Bickham v. Miller*, 584 F.2d 736 (5 Cir. 1978); and *Reeb v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924 (5 Cir. 1975) and therefore does not create conflict jurisdiction. This is apart from the fact that the decisions are from the same federal court of appeals rather than another federal court of appeals and cannot be made the basis of conflict certiorari. (Rule 17 of the Supreme Court)

Lastly, Cross' argument although never fully explored that he was denied a hearing and thus deprived of his constitutional rights under the Thirteenth and Fourteenth Amendments is patently without merit because he was afforded a full hearing and his claim of denial of constitutional rights was never raised in the lower court. *Saxbe v Bustos*, supra.

CONCLUSION

For all the reasons set forth above, Respondents, DADE COUNTY SCHOOL BOARD, JEFF WEST and STEVE MOORE, respectfully submit that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Brief was mailed this 23rd day of June, 1981 to: FRED CROSS, 2950 Northwest 64th Street, Miami, Florida 33147.

JEANNE HEYWARD